



*Commonwealth of Virginia*

***VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY***

VALLEY REGIONAL OFFICE

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Secretary of Natural Resources

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Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
AMERICAN HARDWOOD INDUSTRIES, LLC  
FOR  
WARM SPRINGS MILL and LEXINGTON MILL  
VPDES Permit No. VAR05  
Registration Nos. VAR051749 and VAR051999**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and American Hardwood Industries, LLC, regarding the Warm Springs Mill and Lexington Mill, for the purpose of resolving certain violations of the State Water Control Law and the applicable permits and regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "2014 Permit" means VPDES General Permit No. VAR05 which was issued under the State Water Control Law and the Regulation on July 1, 2014 and which expired on June 30, 2019.
2. "2019 Permit" means VPDES General Permit No. VAR05 which was issued under the State Water Control Law and the Regulation on July 1, 2019 and which expires on June 30, 2024.

3. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
4. "American Hardwood Industries" or "AHI" means American Hardwood Industries, LLC, a limited liability company authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. American Hardwood Industries, LLC is a "person" within the meaning of Va. Code § 62.1-44.3.
5. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
6. "CSCE" means comprehensive site compliance evaluation.
7. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
8. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
9. "Discharge" means the discharge of a pollutant.
10. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
  - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
11. "DMR" means Discharge Monitoring Report.
12. "Lexington Mill" means the Lexington Mill facility located at 537 Fredericksburg Road, Lexington, Virginia, from which discharges of stormwater associated with industrial activity occur.
13. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
14. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.

15. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
16. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
17. "Registration statement" means a registration statement for coverage under a storm water general permit.
18. "Regulation" means the Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Storm Water Associated with Industrial Activity," 9 VAC 25-151-10, *et seq.*
19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
20. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
21. "SWPPP" means Stormwater Pollution Prevention Plan.
22. "TMDL" means Total Maximum Daily Load.
23. "Va. Code" means the Code of Virginia (1950), as amended.
24. "VAC" means the Virginia Administrative Code.
25. "VPDES" means Virginia Pollutant Discharge Elimination System.

26. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
27. "Warm Springs Mill" means the Warm Springs Mill facility located at 107 Rock Creek Road, Bath County, Virginia, from which discharges of stormwater associated with industrial activity occur.

### **SECTION C: Findings of Fact and Conclusions of Law**

#### **Warm Springs Mill**

1. AHI owns and operates the Warm Springs Mill, which discharges stormwater associated with industrial activity.
2. On July 1, 2014, DEQ issued AHI coverage for the Warm Springs Mill under the 2014 Permit, assigning it registration number VAR051749.
3. The 2014 Permit allowed AHI to discharge stormwater associated with industrial activity from Warm Springs Mill to Warm Springs Run, in strict compliance with the terms and conditions of the 2014 Permit.
4. Warm Springs Run is a tributary to the Jackson River and is located in the James River Basin. Warm Springs Run was assessed during the 2018 assessment period as fully supporting all uses for which it is monitored.
5. On April 24, 2018, DEQ received a citizen complaint alleging that foam was flowing from the Warm Springs Mill and being discharged into Warm Springs Run. The same day, Bath County Emergency Services reported to DEQ that a foam-laden discharge entered Warm Springs Run.
6. On April 25, 2018, DEQ staff performed an inspection of the Warm Springs Mill and observed a turbid, brown discharge and a foam-laden discharge from the facility.

Va. Code § 62.1-44.5.A states: "Except in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."

The Regulation, at 9 VAC 25-151-70, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.

7. The source of the foam discharge appeared to be a sapstain and mold control dip chemical product that was washed off of stored lumber by stormwater.

8. During the April 25, 2018 inspection, DEQ staff did not observe adequate best management practices associated with the reduction of exposure of pollutants to stormwater as it relates to the chemical treatment and lumber storage areas or wood preserving activities. DEQ staff also observed staining on the ground in front of the dip tank.

2014 Permit Part IV.C.2 states: "The description of stormwater management controls shall address the following areas of the site: log, lumber and wood product storage areas; residue storage areas; loading and unloading areas; material handling areas; chemical storage areas; and equipment and vehicle maintenance, storage and repair areas. Facilities that surface protect or preserve wood products shall address specific control measures, including any BMPs, for wood surface protection and preserving activities..."

2014 Permit Part III.B.4.b.1 states: "The permittee shall keep clean all exposed areas of the facility that area potential sources of pollutants to stormwater discharges. Typical problem areas include areas around trash containers, storage areas, loading docks, and vehicle fueling and maintenance areas. The plan shall include a schedule for regular pickup and disposal of waste materials, along with routine inspections for leaks and conditions of drums, tanks and containers."

2014 Permit Part III.B.4.b.2 states: "Eliminating and minimizing exposure. To the extent practicable, manufacturing, processing, and material storage areas...shall be located inside, or protected by a storm-resistant covering to prevent exposure to rain, snow, snowmelt, and runoff."

9. During the April 25, 2018 inspection, DEQ staff also observed rock check dams with sedimentation. AHI's documented monthly inspections also identified control measures were not operating effectively. No corrective actions or maintenance were observed in the SWPPP. DEQ staff did not observe a CSCE documented in the Facility's SWPPP for 2017. A file review revealed that DEQ did not have a record of submission of the Facility's Annual Chesapeake Bay TMDL Action Plan Report due June 30, 2017.

2014 Permit Part I.A.6.b states: "The permittee shall take corrective actions whenever: Routine facility inspections, comprehensive site compliance evaluations, inspections by local, state or federal officials, or any other process, observation or event result in a determination that modifications to the stormwater control measures are necessary to meet the permit requirements..."

2014 Permit Part III.B.5 states: "Any deficiencies in the implementation of the SWPPP that are found shall be corrected as soon as practicable, but not later than within 30 days of the inspection..."

2014 Permit Part III.E requires that a CSCE be conducted at least annually and a copy of the report be kept with the SWPPP.

2014 Permit Part I.B.7.b.(3)(d) states: "Permittees required to develop and implement a Chesapeake Bay TMDL Action Plan shall submit an annual report to the department by June 30<sup>th</sup> of each year describing the progress in meeting the required reductions."

10. AHI submitted documentation that the check dams had been cleaned and rebuilt, the pond maintenance was completed, and that road maintenance and other site maintenance activities were performed. On July 26, 2018, refresher training was provided to the SWPPP team leader regarding documentation requirements. DEQ also received copies of the 2017 action plan report and 2017 CSCE from AHI.
11. On May 18, 2018, DEQ issued NOV No. W2018-05-V-0002 to AHI citing the unpermitted discharge and industrial stormwater observations listed above. DEQ met with AHI representatives on July 12, 2018 and October 9, 2019 to discuss the NOV and corrective actions.
12. Based on the results of the April 25, 2018 inspection, the Board concludes that AHI has violated conditions Part I.A.6, Part I.B.7.b.3.d, Part III.B.4.b.1, Part III.B.4.b.2, Part III.B.5, Part III.E, and Part IV.C.2, of the 2014 Permit, Va. Code § 62.1-44.5, and 9 VAC 25-151-70 as noted in paragraphs C(5)-(11) of this Order.
13. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
14. The Department has issued coverage under no permits or certificates to AHI for the Warm Springs Mill other than under VPDES Permit No. VAR051749.
15. Warm Springs Run is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
16. AHI has submitted documentation and DEQ staff has verified that the violations as described above, have been corrected. AHI has provided photo documentation of the construction of a sloped, contained concrete pad where dipped lumber is staged for waxing and drying. AHI has also provided documentation of a roof structure over the concrete area. In addition, AHI provided a written description of the best management practices that it will implement for dipping and waxing at Warm Springs Mill. AHI has also submitted photo documentation of the clean-up of soil at the dip tank approach; the soil was placed in drums and properly disposed of off-site.

#### Lexington Mill

17. AHI owns and operates the Lexington Mill, which discharges stormwater associated with industrial activity.
18. On July 1, 2014, DEQ issued AHI coverage for the Lexington Mill under the 2014 Permit, assigning it registration number VAR051999. Coverage under the 2014



Permit was administratively continued until the facility received coverage under the 2019 Permit, which was issued on August 30, 2019.

19. The 2014 Permit allowed and the 2019 Permit allows AHI to discharge stormwater associated with industrial activity from the Lexington Mill to Ford Run, in strict compliance with the terms and conditions of the permits.
20. Ford Run is a tributary to the Maury River and is located in the James River Basin. Ford Run was not assessed during the 2018 assessment period.
21. On September 6, 2018, DEQ staff conducted an inspection of the Lexington Mill and observed dip tank operations. DEQ staff observed that a significant amount of dip chemical drained out of both ends of the stacks to the ground, as the stacks were moved from above the dip tank to a storage area next to the dip tanks. AHI stated that lumber was sometimes dipped when it is raining. DEQ staff also observed wax overspray on the ground in the log storage areas.

2014 Permit Part III.B.4.a states: "Control measures shall be implemented for all areas identified in Part III.B.3 to prevent or control pollutants in stormwater discharges from the facility. Regulated stormwater discharges from the facility include stormwater runoff that commingles with stormwater discharges associated with industrial activity at the facility."

2014 Permit Part III.B.4.b.1 states: "Good housekeeping. The permittee shall keep clean all exposed areas of the facility that are potential sources of pollutants to stormwater discharges."

2014 Permit Part III.B.4.b.2 states: "Eliminating and minimizing exposure. To the extent practicable, manufacturing, processing, and material storage areas...shall be located inside, or protected by a storm-resistant covering to prevent exposure to rain, snow, snowmelt, and runoff."

22. On December 10, 2018, DEQ issued WL No. W2018-12-V-1030 to AHI.
23. On January 16, 2019, DEQ staff met with representatives of AHI to discuss operations at Lexington Mill and AHI's general procedures at other lumberyards.
24. On February 1, 2019, AHI submitted a written response addressing DEQ requests and DEQ received a plan from AHI on April 3, 2019 for the construction of a roof cover over the dip tank area and concrete pad, with the objective of completing the project by July 31, 2019.
25. Between April 3, 2019 and July 25, 2019 AHI and DEQ had multiple exchanges of emails to clarify questions around the proposed dip tank area.

26. On August 8, 2019, DEQ staff performed an inspection of the Lexington Mill and observed lumber dipping operations and drying of dipped lumber in areas exposed to stormwater. Adequate control measures were not implemented to prevent or control pollutants in stormwater discharges from the Lexington Mill. Additionally, adequate stormwater control measures were not observed when spraying wax on logs at the Lexington Mill. Dipping and wax activities were not located inside or protected to eliminate/minimize exposure to rainfall.

2014 Permit Part III.B.4.a states: "Control measures shall be implemented for all areas identified in Part III.B.3 to prevent or control pollutants in stormwater discharges from the facility. Regulated stormwater discharges from the facility include stormwater runoff that commingles with stormwater discharges associated with industrial activity at the facility."

2014 Permit Part III.B.4.b.1 states: "Good housekeeping. The permittee shall keep clean all exposed areas of the facility that are potential sources of pollutants to stormwater discharges."

2014 Permit Part III.B.4.b.2 states: "Eliminating and minimizing exposure. To the extent practicable, manufacturing, processing, and material storage areas...shall be located inside, or protected by a storm-resistant covering to prevent exposure to rain, snow, snowmelt, and runoff."

27. On September 20, 2019, DEQ issued NOV No. W2019-09-V-0001 to AHI for violations stated in C(26).
28. On October 9, 2019, DEQ met with representatives of AHI to discuss the NOV and corrective actions. AHI also submitted a written response on October 15, 2019.
29. In its October 15, 2019 written response, AHI stated that it planned to increase the roof cover over the dip tank area. AHI said it would pour concrete under the expanded, covered area and it would be sloped to a common collection point, and any residual liquid will be pumped back into the dip tank. AHI also updated its best management practices for the handling of dipped packs. AHI also planned to enhance the concrete area where waxing occurs and add side and back walls, along with a rounded berm on the front entrance. The logs to be waxed will be placed within the concrete area to prevent stormwater discharge.
30. Based on the results of the September 6, 2018 and August 8, 2019 inspections, the January 16, 2019 and October 9, 2019 meetings, and written responses, the Board concludes that AHI has violated conditions Part III.B.4.a, Part III.B.4.b.1, and Part III.B.4.b.2 of the 2014 Permit as noted in paragraphs C(21)-(26) of this Order.



31. Va. Code § 62.1-44.5 states that: "Except in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
32. The Regulation, at 9 VAC 25-151-70, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
33. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
34. The Department has issued coverage under no permits or certificates to AHI for the Lexington Mill other than under VPDES Permit No. VAR051999.
35. Ford Run is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
36. On January 31, 2020, AHI submitted photo documentation of completion of the corrective action items described in paragraph C(29), above.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.15, the Board orders AHI and AHI agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$8,295 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

AHI shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, AHI shall be liable for attorneys' fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of AHI for good cause shown by AHI, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2018-05-V-0002, dated May 18, 2018; NOV No. W2019-09-V-0001, dated September 20, 2019 and Warning Letter No. W2018-12-V-1030, dated December 10, 2018. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, AHI admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. AHI consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. AHI declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by AHI to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. AHI shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. AHI shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. AHI shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred.

that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance;  
and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.


9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and AHI. Nevertheless, AHI agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. the Director or his designee terminates the Order after AHI has completed all of the requirements of the Order;
  - b. AHI petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to AHI.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve AHI from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by AHI and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of AHI certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind AHI to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of AHI.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, AHI voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 18<sup>th</sup> day of June, 2020.



Amy T. Owens, Regional Director  
Department of Environmental Quality

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American Hardwood Industries, LLC voluntarily agrees to the issuance of this Order.

Date: 4/10/20 By: [Signature], President  
(Person) (Title)  
American Hardwood Industries, LLC

Commonwealth of Virginia  
City/County of Augusta

The foregoing document was signed and acknowledged before me this 10<sup>th</sup> day of  
April, 2020, by John D'lea who is  
President of American Hardwood Industries, LLC on behalf of the  
company.

[Signature]  
Notary Public  
352251  
Registration No.

My commission expires: August 31, 2021

Notary seal:





## **APPENDIX A SCHEDULE OF COMPLIANCE**

### **1. Dipping Activities**

- a. Within 14 days of resuming dipping activities at the Warm Springs Mill, AHI shall evaluate whether the practices in place prevent any dripping of the dip tank chemicals onto the ground in areas exposed to stormwater. This shall include when the material is moved from the location of the dip tank to the covered wax application area, and AHI shall notify DEQ of its observations in writing. If dripping onto the ground is observed, AHI must include in its submittal to DEQ a description and schedule of additional measures it will take to prevent exposure to stormwater. The schedule will be enforceable under this order once approved by DEQ.

### **2. DEQ Contact**

Unless otherwise specified in this Order, AHI shall submit all requirements of Appendix A of this Order to:

**Eric Millard  
Enforcement Specialist Senior  
VA DEQ, Valley Regional Office  
PO Box 3000, Harrisonburg, VA 22801  
540-574-7813  
Fax: 540-574-7878  
Eric.millard@deq.virginia.gov**